

**Summary:** The Defendant filed a motion for to appoint counsel, arguing that counsel is necessary for his 28 U.S.C. § 2255 motion because he is unable to afford counsel, his imprisonment will greatly limit his ability to litigate, and he has little access to jailhouse lawyers because he is in special housing. The Court denied the motion, finding that there is not a constitutional or statutory right to counsel in habeas proceedings, that the interests of justice do not require the appointment of counsel, and that neither the claims nor the facts giving rise to them appear to be complex.

**Case Name:** USA v. Patrick Timothy McMorrow

**Case Number:** 1-03-cr-80

**Docket Number:** 127

**Date Filed:** 12/5/08

**Nature of Suit:**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NORTH DAKOTA  
SOUTHWESTERN DIVISION**

United States of America,	)	
	)	
Plaintiff,	)	<b>ORDER DENYING DEFENDANT’S</b>
	)	<b>MOTION FOR APPOINTMENT</b>
vs.	)	<b>OF COUNSEL</b>
	)	
Patrick Timothy McMorrow,	)	
	)	Case No. 1:03-cr-080
Defendant.	)	
_____	)	
	)	
Patrick Timothy McMorrow,	)	
	)	
Petitioner,	)	
	)	
vs.	)	Case No. 1:08-cv-004
	)	
United States of America,	)	
	)	
Respondent.	)	
_____	)	

Before the Court is the Defendant's "Motion for Appointment of Counsel" filed on December 1, 2008. See Docket No. 125. The Government filed a response in opposition to the motion on December 4, 2008. See Docket No. 126.

On September 8, 2008, the defendant, Patrick Timothy McMorrow, filed a petition for habeas corpus relief pursuant to 28 U.S.C. § 2255 and a motion to appoint counsel. See Docket Nos. 113, 113-2. McMorrow contended in his original motion to appoint counsel that counsel was necessary because he does not have legal training and does not have access to a law library or other legal assistance. The Court denied that motion to appoint counsel. See Docket No. 116. In the motion to appoint counsel now before the Court, McMorrow contends that he is unable to afford counsel, his imprisonment will greatly limit his ability to litigate, and he has little access to jailhouse lawyers because he is in special housing. The analysis the Court used in denying McMorrow's previous motion to appoint counsel is equally applicable to this motion.

There is neither a constitutional nor statutory right to counsel in habeas proceedings. See Morris v. Dormire, 217 F.3d 556, 558 (8th Cir. 2000); Blair v. Armontrout, 916 F.2d 1310, 1332 (8th Cir. 1990); see also Boyd v. Goose, 4 F.3d 669, 771 (8th Cir. 1993) (explaining that a habeas corpus proceeding is a civil proceeding to which the Sixth Amendment right to counsel afforded for criminal proceedings does not apply). However, the Court may appoint counsel for a habeas petitioner at any time if it finds that the "the interests of justice so require." See 18 U.S.C. § 3006A(a)(2). If a court conducts an evidentiary hearing on the petition, the interests of justice require that the petitioner be appointed counsel. See Rule 8(c), Rules Governing Section 2255 Cases in the United States District Courts; see also Abdullah v. Norris, 18 F.3d 571, 573 (8th Cir. 1994).

“If no evidentiary hearing is necessary, the appointment of counsel is discretionary.” Abdullah, 18 F.3d at 573.

When exercising its discretion, a court should determine whether, given the particular circumstances of the case, “the appointment of counsel would benefit the petitioner and the court to such an extent that ‘the interests of justice so require’ it.” Id. (citing 18 U.S.C.A. § 3006A(a)(2) and Battle v. Armontrout, 902 F.2d 701, 702 (8th Cir.1990)). Thus, a court should consider a number of relevant factors, including the factual complexity of the case and the petitioner’s ability to investigate and present his claim. See Abdullah, 18 F.3d at 573; see also Battle, 902 F.2d at 702.

The interests of justice do not require the appointment of counsel for McMorrow at this stage of the proceedings and there is no necessity for an evidentiary hearing at this time. Moreover, although McMorrow raises a myriad of claims in his petition for habeas corpus relief, neither the claims nor the facts giving rise to them appear to be complex. Consequently, McMorrow’s motion to appoint counsel (Docket No. 125) is **DENIED** without prejudice.

**IT IS SO ORDERED.**

Dated this 5th day of December, 2008.

/s/ Daniel L. Hovland  
Daniel L. Hovland, Chief Judge  
United States District Court